

**REMARKS**

Reconsideration of the above-identified application in view of the amendments above and remarks below is respectfully requested.

Claims 1, 3-9, 11-13 and new claims 15-22 are currently pending.

**Claims 1 3-6 and 9 stand rejected under 35 U.S.C. 102(b) as being anticipated by Larsen *et al.* (GB 822,276). The rejection is respectfully traversed.**

Specifically regarding claims 1 and 3, the office action states that Larson teaches an adhesion promoting agent which contains tricresyl phosphate (p. 2, line 25).

Larsen et al. actually teaches polyvinyl acetate emulsions which include tricresyl phosphate as a plasticizing agent. This is very different from the present claims where the phosphate ester functions to promote adhesion between building materials and insulating materials such as polystyrene.

**Regarding claim 4, the office action states that the limitation “is absorbed onto an inert mineral support...” does not confer patentability since it is the recitation of an intended use.**

Claim 4 has been amended to depend from a claim claiming an article of construction. Further, the adhesion promoter is further limited to be on a specific set of substrates. The Examiner’s observation has been rendered moot since the use of the claimed adhesion promoter on these substrates is not taught in the Examiner’s prior art.

**Regarding claim 5, the office action states that Larsen teaches a water-insoluble film forming polymer comprising tricresyl phosphate.**

Larsen does not teach preparing an article of construction comprising a mineral building material and an insulating material adhered thereto wherein a phosphate ester serves as an adhesion promoter. Larsen teaches using PVA as a bonding agent. The use of a phosphate ester is limited to that of a plasticizer for the PVA.

**Regarding claim 6, the office action states that Larsen teaches a water-insoluble film forming polymer of claim 5 in the form of an aqueous dispersion.**

Larsen's teachings regarding forming an emulsion are irrelevant in regard to Claim 6 because it does not teach the other elements found in Claims 1 and 5.

**Regarding claim 9, the office action states that Larsen teaches that the polymer composition is polyvinyl acetate. As claim 9 is a product by process claim, patent ability does not depend upon the method of productions.**

Claim 9 specifically limits the range of the polymers claimed in Claim 5. Since Larsen does not disclose all of the limits of Claims 1 and 5, then Claim 9 is not anticipated by Larsen.

**Claims 1, 3 and 11 stand rejected under 35 U.S.C. 102(b) as being anticipated by Bradley *et al.* (US 4,473,406).** The rejection is respectfully traversed.

**Regarding claims 1, 3 and 11 the office action states that Bradley teaches a mineral binder composition comprising tributyl phosphate.**

Bradley teaches preparing a "cementiferous composition" using as a plasticizer additive, an admixture of a "polymerizable carboxylic acid" and a "hydroxy alkyl ester. This reference further teaches that tributyl phosphate can be used as an anti-foaming agent. Clearly this does not teach using the phosphate esters of the application as an adhesion promoter. Therefore, the claims are not anticipated by Bradley.

**Claims 1, 3 and 11 stand rejected under 35 U.S.C. 102(b) as being anticipated by Aoki *et al.* (US 4,367,300). The rejection is respectfully traversed.**

**Regarding claims 1, 3 and 11 the office action states that Aoki *et al.*, teaches a mineral binder composition comprising tributyl phosphate.**

Aoki, like Bradley, teaches the use of tributyl phosphate as an anti-foaming agent. It does not teach elements of claim 1, such as a thermal insulating material and thus does not anticipate Claims 1, 3, and 11.

**Claims 7 and 8 stand rejected under 35 U.S.C. 102(b) as being anticipated by Larsen *et al.* (GB 822,276). The rejection is respectfully traversed.**

**Regarding claim 7, the office action states that Larsen *et al.* teach polyvinyl acetate is present in an amount of 55 to 60 parts by weight and tricresyl phosphate is present in an amount of 8 parts by weight.**

Since Larsen does not anticipate the claims from which Claim 7 depends, for the same reasons, Claim 7 is not anticipated by Larsen.

**Regarding claim 8, the office action states that Larsen *et al.* teach polyvinyl acetate is present in an amount of 55 to 60 parts by weight and tricresyl phosphate is present in an amount of 8 parts by weight, but fails to teach that the tricresyl phosphate is in an amount of between 1% and 5% by weight relative to the weight of the latex powder.**

Since Larsen does not anticipate the claims from which Claim 8 depends, for the same reasons, Claim 8 is not anticipated by Larsen.

**Claims 12 and 13 stand rejected under 35 U.S.C. 103(a) as being obvious by Aoki et al. (US 4,367,300). The rejection is respectfully traversed.**

**Regarding claims 12 and 13, the office action states that Aoki et al teach that the mineral binder is a hydraulic binder such as cement where the amount of tributyl phosphate is 1.4% of the resin composition, the resin composition is used in the range of 5-60% by weight of the sold resin based upon 100 parts by weight of cement and concludes the amount of tributyl phosphate overlaps the claimed ranges.**

Claims 12 and 13 are not obvious over Aoki. Aoki teaches using tributyl phosphate as an anti-foaming agent in a modified cement. One of ordinary skill in the art would not have been motivated or led to recreate the invention claimed in the present application wherein phosphate esters have been discovered to act as adhesion promoters for insulating materials and building materials. These claims are neither anticipated nor obvious over the Examiner's references.

### CONCLUSION

In light of the above amendments and remarks, it is respectfully submitted that the pending claims of the present application are in condition for allowance. If the Examiner has any questions or requires additional information, she is invited to contact the undersigned.

Respectfully submitted,

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